



February 20, 2003

HOUSE BILL No. 1826

DIGEST OF HB 1826 (Updated February 18, 2003 5:15 PM - DI 92)

Citations Affected: IC 6-1.1; IC 6-3.1; noncode.

Synopsis: Clawback of economic development incentives. Provides for the loss of certain listed tax benefits for a business that commits a criminal violation. Provides penalty for late filing of a tax abatement deduction application. Authorizes the county auditor or the department of local government finance to grant the deduction.

Effective: July 1, 2003.

Leonard, Austin

January 23, 2003, read first time and referred to Committee on Ways and Means.
February 19, 2003, amended, reported — Do Pass.

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HB 1826—LS 7378/DI 51+



February 20, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1826

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-1-9.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 9.7. As used in this article, "pass through entity"**
4 **means:**

5 (1) **a corporation that is or would be exempt from the**
6 **adjusted gross income tax under IC 6-3-2-2.8(2);**

7 (2) **a:**

8 (A) **partnership;**

9 (B) **limited liability company; or**

10 (C) **limited liability partnership;**

11 **that is not taxed as a corporation for federal income tax**
12 **purposes under the Internal Revenue Code.**

13 SECTION 2. IC 6-1.1-2.5 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2003]:

16 **Chapter 2.5. Loss of Tax Benefits**

17 **Sec. 1. The definitions in IC 6-3 apply throughout this chapter.**

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1 Sec. 2. As used in this chapter, "felony" means a crime that
2 would qualify as a felony if committed by an individual.

3 Sec. 3. As used in this chapter, "tax benefit" refers to the
4 following:

5 (1) An exemption granted under IC 6-1.1-10-29 (out-of-state
6 manufactured property exemption).

7 (2) A deduction granted under IC 6-1.1-12-41 (local option
8 inventory deduction).

9 (3) A deduction granted under IC 6-1.1-12-42 (statewide
10 inventory deduction).

11 (4) A deduction granted under IC 6-1.1-12.1 (tax abatement).

12 (5) Tax increment revenues (as defined in IC 12-19-1.5-7) in
13 an allocation area (as defined in IC 12-19-1.5-1) to the extent
14 the tax increment revenues were not pledged, with the
15 approval of the governing body (as defined in IC 12-19-1.5-3)
16 to pay an obligation (as defined in IC 12-19-1.5-4).

17 Sec. 4. (a) A tax benefit that is otherwise available to a
18 corporation in a taxable year is not available in a taxable year in
19 which the corporation commits a felony under the laws of Indiana
20 or the United States if:

21 (1) an act that is an element of the felony occurred in Indiana
22 at a location, related to sales, involving an investment, using
23 employees, or involving a business enterprise that accrued a
24 tax benefit; and

25 (2) the corporation is later convicted of the felony in a court
26 with criminal jurisdiction over the crime.

27 (b) The tax benefit that is lost under this section may not be
28 carried forward to a subsequent taxable year, carried back to a
29 previous taxable year, or refunded. If the tax benefit is part of a
30 multi-year tax benefit granted to a corporation, the corporation
31 also is not entitled to the tax benefit in any subsequent taxable
32 year.

33 (c) Collection of delinquent tax liability resulting from the
34 application of a tax benefit that is lost under this section is not
35 subject to the statute of limitations on the collection of delinquent
36 tax liability that otherwise applies to the collection of delinquent
37 tax liability. However, an action to collect a delinquent tax and any
38 related interest and penalties resulting from the application of this
39 section must be initiated not later than three (3) years after the
40 date that the corporation's conviction is final and unappealable.

41 (d) This section does not bar the corporation from reapplying
42 for the tax credit for the same or similar economic activity, if the

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law granting the credit allows reapplication, or from obtaining a tax credit for actions taken by the corporation that are unrelated to the activity for which the original tax benefit was granted.

Sec. 5. A pass through entity shall be treated as a corporation for the purposes of applying section 4 of this chapter.

Sec. 6. An individual shall be treated as a corporation for the purposes of applying section 4 of this chapter to the extent that the tax benefit is related to an activity conducted by the individual as a sole proprietor:

(1) engaged in a trade or business; or

(2) for the production of income;

other than as an employee of another person, corporation, or pass through entity.

SECTION 3. IC 6-1.1-12.1-4.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.8. (a) This section applies to any deduction application that is filed with the county auditor or the department of local government finance after the date required for the deduction application.

(b) After June 30, 2003, the county auditor and department of local government finance may accept the late filed deduction application if the designating body granting the deduction adopts a resolution that authorizes the acceptance of the deduction application.

(c) A certified copy of the resolution must accompany the late filed deduction application.

(d) The late filing of a deduction application results in a reduction of the deduction as follows:

(1) Two percent (2%) if filed less than thirty (30) days after the date required by law.

(2) Ten percent (10%) if filed thirty (30) or more days after the date required by law.

SECTION 4. IC 6-3.1-1-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this article, "pass through entity" means:

(1) a corporation that is or would be exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a:

(A) partnership;

(B) limited liability company; or

(C) limited liability partnership;



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that is not taxed as a corporation for federal income tax purposes under the Internal Revenue Code.

SECTION 5. IC 6-3.1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 1.5. Loss of Tax Benefits

Sec. 1. As used in this chapter, "felony" means a crime that would qualify as a felony if committed by an individual.

Sec. 2. As used in this chapter, "tax benefit" refers to the following:

- (1) Research expense credit under IC 6-3.1-4.
- (2) Investment credit under IC 6-3.1-5.
- (3) Enterprise zone interest credit under IC 6-3.1-7.
- (4) Enterprise zone investment cost credit under IC 6-3.1-10.
- (5) Industrial recovery tax credit under IC 6-3.1-11.
- (6) Military base recovery tax credit under IC 6-3.1-11.5.
- (7) Economic development for a growing economy tax credit under IC 6-3.1-13.
- (8) Capital investment tax credit under IC 6-3.1-13.5.
- (9) Indiana riverboat building credit under IC 6-3.1-17.
- (10) Rerefined lubrication oil facility credit under IC 6-3.1-22.2.
- (11) Voluntary remediation tax credit under IC 6-3.1-23.

Sec. 3. (a) A tax benefit granted by state law that is otherwise available to a corporation in a taxable year is not available in a taxable year in which the corporation commits a felony under the laws of Indiana or the United States if:

- (1) an act that is an element of the felony occurred in Indiana at a location, related to sales, involving an investment, using employees, or involving a business enterprise that accrued a tax benefit; and
- (2) the corporation is later convicted of the felony in a court with criminal jurisdiction over the crime.

(b) The tax benefit that is lost under this section may not be carried forward to a subsequent taxable year, carried back to a previous taxable year, or refunded. If the tax benefit is part of a multi-year tax benefit granted to a corporation, the corporation also is not entitled to the tax benefit in any subsequent taxable year.

(c) Collection of delinquent tax liability resulting from the application of a tax benefit that is lost under this section is not subject to the statute of limitations on the collection of delinquent

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1 tax liability that otherwise applies to the collection of delinquent
2 tax liability. However, an action to collect a delinquent tax and any
3 related interest and penalties resulting from the application of this
4 section must be initiated not later than three (3) years after the
5 date that the corporation's conviction is final and unappealable.

6 (d) This section does not bar the corporation from reapplying
7 for the tax credit for the same or similar economic activity, if the
8 law granting the credit allows reapplication, or from obtaining a
9 tax credit for actions taken by the corporation that are unrelated
10 to the activity for which the original tax benefit was granted.

11 Sec. 4. A pass through entity shall be treated as a corporation
12 for the purposes of applying section 3 of this chapter.

13 Sec. 5. An individual shall be treated as a corporation for the
14 purposes of applying section 3 of this chapter to the extent that the
15 tax benefit is related to an activity conducted by the individual as
16 a sole proprietor:

17 (1) engaged in a trade or business; or

18 (2) for the production of income;

19 other than as an employee of another person, corporation, or pass
20 through entity.

21 SECTION 6. [EFFECTIVE JULY 1, 2003] (a) Subject to
22 subsection (c), IC 6-3.1-1.5, as added by this act, applies only to
23 taxable years beginning after December 31, 2003.

24 (b) Subject to subsection (c), IC 6-1.1-2.5, as added by this act,
25 applies only to property taxes first due and payable after
26 December 31, 2003.

27 (c) IC 6-1.1-2.5 and IC 6-3.1-1.5, both as added by this act, do
28 not apply to the following:

29 (1) Felonies committed before January 1, 2004.

30 (2) A multiyear tax benefit (as defined in IC 6-1.1-2.5 and
31 IC 6-3.1-1.5, both as added by this act), if receipt of the tax
32 benefits was conditioned on an agreement entered into before
33 January 1, 2004, by the taxpayer and a governmental entity.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1826, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, after line 17, begin a new paragraph and insert:

"Sec. 2. As used in this chapter, "felony" means a crime that would qualify as a felony if committed by an individual."

Page 2, line 1, delete "2." and insert "3."

Page 2, line 1, delete "a" and insert **"the following:"**.

Page 2, delete lines 2 through 7, begin a new line block indented and insert:

"(1) An exemption granted under IC 6-1.1-10-29 (out-of-state manufactured property exemption).

(2) A deduction granted under IC 6-1.1-12-41 (local option inventory deduction).

(3) A deduction granted under IC 6-1.1-12-42 (statewide inventory deduction).

(4) A deduction granted under IC 6-1.1-12.1 (tax abatement).

(5) Tax increment revenues (as defined in IC 12-19-1.5-7) in an allocation area (as defined in IC 12-19-1.5-1) to the extent the tax increment revenues were not pledged, with the approval of the governing body (as defined in IC 12-19-1.5-3) to pay an obligation (as defined in IC 12-19-1.5-4)."

Page 2, line 8, delete "3." and insert "4."

Page 2, line 10, delete ":" and insert **"commits a felony under the laws of Indiana or the United States if:**

(1) an act that is an element of the felony occurred in Indiana at a location, related to sales, involving an investment, using employees, or involving a business enterprise that accrued a tax benefit; and

(2) the corporation is later convicted of the felony in a court with criminal jurisdiction over the crime."

Page 2, delete lines 11 through 19.

Page 2, line 30, after "liability." insert **"However, an action to collect a delinquent tax and any related interest and penalties resulting from the application of this section must be initiated not later than three (3) years after the date that the corporation's conviction is final and unappealable."**

Page 2, delete lines 36 through 42.

Page 3, delete lines 1 through 30.

Page 3, line 32, delete "sections 3 and" and insert **"section"**.

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Page 3, line 34, delete "sections 3 and" and insert **"section"**.

Page 3, between lines 40 and 41, begin a new paragraph and insert:

"SECTION 3. IC 6-1.1-12.1-4.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.8. (a) This section applies to any deduction application that is filed with the county auditor or the department of local government finance after the date required for the deduction application.

(b) After June 30, 2003, the county auditor and department of local government finance may accept the late filed deduction application if the designating body granting the deduction adopts a resolution that authorizes the acceptance of the deduction application.

(c) A certified copy of the resolution must accompany the late filed deduction application.

(d) The late filing of a deduction application results in a reduction of the deduction as follows:

(1) Two percent (2%) if filed less than thirty (30) days after the date required by law.

(2) Ten percent (10%) if filed thirty (30) or more days after the date required by law."

Page 4, between lines 14 and 15, begin a new paragraph and insert:

"Sec. 1. As used in this chapter, "felony" means a crime that would qualify as a felony if committed by an individual."

Page 4, line 15, delete "1." and insert **"2."**

Page 4, line 15, delete "a" and insert **"the following:"**.

Page 4, delete lines 16 through 19, begin a new line block indented and insert:

"(1) Research expense credit under IC 6-3.1-4.

(2) Investment credit under IC 6-3.1-5.

(3) Enterprise zone interest credit under IC 6-3.1-7.

(4) Enterprise zone investment cost credit under IC 6-3.1-10.

(5) Industrial recovery tax credit under IC 6-3.1-11.

(6) Military base recovery tax credit under IC 6-3.1-11.5.

(7) Economic development for a growing economy tax credit under IC 6-3.1-13.

(8) Capital investment tax credit under IC 6-3.1-13.5.

(9) Indiana riverboat building credit under IC 6-3.1-17.

(10) Rerefined lubrication oil facility credit under IC 6-3.1-22.2.

(11) Voluntary remediation tax credit under IC 6-3.1-23."

Page 4, line 20, delete "2." and insert **"3."**

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Page 4, line 22, delete ":" and insert **"commits a felony under the laws of Indiana or the United States if:**

(1) an act that is an element of the felony occurred in Indiana at a location, related to sales, involving an investment, using employees, or involving a business enterprise that accrued a tax benefit; and

(2) the corporation is later convicted of the felony in a court with criminal jurisdiction over the crime."

Page 4, delete lines 23 through 31.

Page 4, line 42, after "liability." insert **"However, an action to collect a delinquent tax and any related interest and penalties resulting from the application of this section must be initiated not later than three (3) years after the date that the corporation's conviction is final and unappealable."**

Page 5, delete lines 6 through 40.

Page 5, line 42, delete "sections 2 and" and insert **"section"**.

Page 6, line 2, delete "sections 2 and" and insert **"section"**.

Page 6, line 9, after "(a)" insert **" Subject to subsection (c),"**.

Page 6, line 11, delete "June 30," and insert **"December 31,"**.

Page 6, line 12, after "(b)" insert **" Subject to subsection (c),"**.

Page 6, after line 13, begin a new paragraph and insert:

"(c) IC 6-1.1-2.5 and IC 6-3.1-1.5, both as added by this act, do not apply to the following:

(1) Felonies committed before January 1, 2004.

(2) A multiyear tax benefit (as defined in IC 6-1.1-2.5 and IC 6-3.1-1.5, both as added by this act), if receipt of the tax benefits was conditioned on an agreement entered into before January 1, 2004, by the taxpayer and a governmental entity."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1826 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 26, nays 0.

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